

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER

S.B. Civil Writ Petition No.6588/1997
Sultan Singh
Vs.
State of Raj. & Ors.

Date of Order :: 27th July, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Ajay Gupta for petitioner.
Shri Shyam Arya, Government Advocate.
Shri Vimal Choudhary for respondent.
no.7

The petitioner in this writ petition has prayed for a mandamus against the respondents to prevent the respondent no.4 from making unauthorised excavation and blasting in a mining area and further evict him from the land thereof which according to the petitioner is a forest area and further direct respondents to

pay to him Rs.2,00,000/- as compensation.

I have heard Shri Ajay Gupta, the learned counsel for the petitioner, Shri Shyam Arya, the learned Government Advocate for State and Shri Vimal Choudhary, the learned counsel for respondent no.7.

Shri Ajay Gupta, the learned counsel for the petitioner argued that the petitioner is khatedar of agricultural land measuring 4 acres in different khasra numbers adjoining to the disputed khasra no.776 in revenue Village Dariba, Tehsil Neemkathana. Out of those khasras, he has his house on part of khasra no.408 close to the location of the disputed mines. Khasra

no.776 is entered as forest land in revenue records, beside there is forest in the lands of khasra no.776/2, jamabandi of which has been placed on record. Respondent no.7 Rajendra Agarwal and his father Sitaram Agarwal in connivance with the mining authorities obtained one mining lease each in their name measuring 100x100 sq. mtrs. They are located not only in the forest area, but adjacent to the house of the petitioner. They are engaged in illegal excavation, making blasting and explosions which is posing danger to his residential house and threat to the life of his family members. His representation to the authorities for taking action against

him, has gone unheeded. Although the respondent no.7 and his father holds three different mining lease in that area but they are excavating minerals in only one of them to save the amount of royalty which is an offence under the Mines and Minerals (Regulation and Development) Act, 1957. According to Rule 48(iv), any person making illegal excavation of minerals by trespassing over any land without a valid licence is liable to be evicted.

Shri Ajay Gupta, the learned counsel for the petitioner has invited my attention to the certified copy of the map, which was obtained from the revenue authorities as also copy of jamabandi for Svt. 2053 to 2056 wherein

the land of khasra no.776/2 has been recorded as forest land. He has also placed on record copy of the report of the Patwari dated 23.2.1997 according to which khasra no.776/1 measuring 484 hectares was recorded as "gair mumkin pahad" and khasra no.777/2 has been recorded as gair mumkin pahad forest. This report indicates that the pillars are located on khasra no.776 and 408 and that the crane was located on khasra no.409 which was in fact in the khatedari of the petitioner. He argued that when the complaints received by the authorities including the forest department, the Deputy Conservator of Forest at the time of renewal in August, 1985 clearly mentioned that the

land for which lease was granted to Sitaram Agarwal falls in forest area. At that stage, Sita Ram filed a civil suit before the Court of Judicial Magistrate and on the strength of the injunction order granted in that case, he was proceeding with the mining activities which injunction order was confirmed on 1.2.1996. Neither the forest department nor the Mining Department is taking any steps to contest the matter and this has resulted in continuous violation of the order of Hon'ble Supreme Court dated 12.12.1996, in T.N. Godavarman Thirumulkpad vs. Union of India & Ors. reported in 1997 (2) SCC 267. It was argued that even when the dispute was raised about the

land being forest, the mining lease in favour of Shri Sitaram Agarwal was renewed merely on the basis of the affidavit that if the disputed land would fall under the Forest Department, he shall not excavate in that particular area. It is therefore prayed that the writ petition be allowed in terms of the prayers made.

The writ petition has been contested by both Government and the private respondents.

Shri Shyam Arya, the learned Government Advocate argued that the mining lease was renewed in favour of respondent no.7 and Shri Sitaram on the basis of affidavit that they shall not excavate the minerals from the disputed

land if it was a forest area. Shri Shyam Arya however could not give specific answer to the various pleas set up by the department in their reply that burden to prove whether khasra no.776/2 is a forest land or not, lies on the forest department and not on the mining department. He submitted that when the renewal of mining lease was made, the petitioner has given his NOC on a duly attested stamp paper by the notary acknowledging the fact that population of M.L. No.176/96 falls in his land of khasra no.408 and now he cannot raise any objection. It was submitted that on receiving complaint, notice was given to respondent no.7 and in response to which he replied that no

blasting was done in the mining area and the excavation of minerals was being made by using heavy cutting gangsaws and that the cracks in the house of the petitioner has occasioned on account of heavy rains. It was argued that there was no violation of order passed by the Hon'ble Supreme Court in T.N. Godavarman Thirumulkpad's case. He therefore prayed that the writ petition be dismissed.

Shri Vimal Choudhary, learned counsel for respondent no.7 opposed the writ petition and argued that the petitioner has not challenged the mining lease and therefore writ petition should be dismissed. While relying on the decision of division

bench of this court in Ishwar Lal vs. State of Raj. & Ors., RLR 1988 (2) 384, he argued that alternative remedy is available to the petitioner before the authorities themselves by filing an appeal / revision and therefore writ petition should be dismissed as not maintainable. He submitted that the mining lease was granted to respondent no.7 on the basis of NOC given by the petitioner and therefore he cannot now object to the same. He denied that the disputed land is a forest land. He therefore prayed that the writ petition be dismissed.

Shri Ajay Gupta, the learned counsel for the petitioner rejoined and submitted that the so called NOC shown

to have been obtained from the petitioner is in fact a forged document. The petitioner neither issued any such NOC to respondent no.7, nor to anyone else. He did not even sign any such paper. He came to know about the same through a complaint filed u/s. 420, 467, 471 and 120B of IPC in the Court of ACJM, Neem Ka Thana against respondent no.7 Sitaram. He denied that the cracks in his house have come due to heavy rainfall.

I have given my thoughtful consideration to the aforesaid arguments advanced by learned counsel for the parties and perused the material on record.

Although the respondent no.7

asserts that it was on the basis of NOC given by the petitioner that the part of the mining lease was granted to him / his father on the lands owned by the petitioner but that position is being contested by the petitioner. He asserts that he has filed criminal complaint against them for filing / preparing a forged document in his name. But even if that is accepted, the fact remains that the authorities had to verify whether the land in dispute over which the mining lease has been granted to the respondent no. 7 and his father is a forest land and not. Prima facie, on perusal of jamabandi of khasra no.777/2 and report of the Patwari dated 23.9.97, it does appear

that while land of khasra no.776/1 is recorded as gair mumkin pahad and land of khasra no.776/2 is entered as forest in the revenue records. If that be correct, the question that is to be examined is whether the mining lease granted to respondent no.7 and his father either two or three in number, could be granted in the forest land. A strange plea has been taken by the government in its reply that burden of proof to show that the land in dispute is a forest area lies on the forest department and not on mining department. Inter-department dispute in so high a judicial forum as this Court, between two respondent departments of the Government cannot be appreciated,

more particularly when it comes to compliance of the judgment of Supreme Court. There are other two disturbing features of the case which surfaced during the course of arguments. They are that when the Deputy Conservator of Forest refused to grant NOC, the land presumably being of the forest (i) an affidavit was procured from the lease holder to the effect that she shall not excavate the minerals if the minerals of the land which falls under the forest area, (ii) an injunction order was procured from the civil court which appears to have been later confirmed on 1.2.1996. Though forest department has not been impleaded as party respondent to the writ petition,

but it appears that the lease granting to the respondent no.7 was renewed from time to time and on the strength of injunction order, excavation continues without having regard to the fact whether the land in question is a forest land or not. Though the learned counsel for the contesting respondent argued that complaints made by the petitioner was result of the disputes between him and the lease holder, I am inclined to hold that even if the petitioner had a dispute with the contesting respondent, the mining operations in a forest land, if it is indeed a forest land, without NOC from the forest department and of the Central Government as required by

Section 2 of the Forest Conservation Act, could not be allowed to go on. In the face of the verdict of the Supreme Court in T.N. Godavarman Thirumulkpad, supra, held that the Forest Conservation Act, 1988 with a view to prevent further deterioration of forest which ultimately result in creating ecological imbalance and therefore provisions have been made for conservation of forest.

Although Shri Vimal Choudhary, the learned counsel for respondent no.7 has raised an objection about maintainability of the writ petition on the ground that the petitioner has an alternate remedy of appeal / revision before the departmental authorities,

but I am not inclined to uphold this argument because this writ petition was filed way back in the year 1997 and was admitted to hearing on 30.4.2007.

In the result, the writ petition is allowed with the direction to the respondents to re-examine the grant / continuation of the mining lease on khasra no.776, 776/1 and 776/2 of revenue Village Dariba, Tehsil Neemakathana with specific reference to the fact whether the land in dispute is a forest land, by obtaining no objection certificate or otherwise, from the concerned Deputy Conservator of Forest and arriving at such satisfaction, grant / cancel / resign the mining lease already granted; after

providing opportunity of hearing to the petitioner as well as the contesting respondent no.7 and accordingly take a fresh decision within a period of three months from the date copy of this judgment is served upon him and till he decides the question as to grant / renewal or otherwise, mining activities on the lands of aforesaid khasra numbers shall remain suspended.

Writ petition is allowed in the terms indicated above. There shall be no order as to costs.

RS/-

(Mohammad Rafiq), J.